IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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I.T.R. No.324 of 1995
Date of Decision:30.11.2006

The Commissioner of Income-tax, Patiala

.....Petitioner

Vs.

M/s Bhasin & Co., Ludhiana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. S.K.Garg Narwana, Advocate for the revenue.

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ADARSH KUMAR GOEL, J.

Following question of law has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh arising out of its order dated 9.1.1992 in I.T.A. No.784/Chandi/1987 in respect of assessment year 1983-84:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in directing that the issue needed reconsideration in the light of the judgment of the Ahmedabad Bench of the Tribunal in the case of ITO Vs. K.S.Lokhandwala (31 ITD 305)?"

The facts as noticed in the statement of case are as under:-

The assessment in the case of the assessee Shri Bhasin was completed under Section 143(3) of the Income-tax Act, 1961 (for short, `the Act') and deduction claimed on account of sales tax & central sales tax payable was disallowed by relying upon **Sirsa Industries v. Commissioner of Income-tax and another,** (1984) 147 ITR 238. An application filed under Section 154 of the Act by the assessee for rectification was dismissed by the Assessing Officer.

In appeal, claim of the assessee was accepted by the CIT(A) by relying upon a DB judgment of this Court in **Commissioner of Income-tax, Amritsar-I v. United India Woollen Mills** (1981) 132 ITR 457. The

Tribunal, remanding the matter back to the Assessing Officer referred to an order passed by the Ahmedabad Bench of the Tribunal in **K.S.Lokhandwala's case** (supra). A perusal of this shows that the same was pertaining to assessment year 1984-85 after the amendment of Section 43B of the Act, whereas in the present case, assessment year involved is 1983-84.

We find that the view expressed by the Tribunal in **K.S.Lokhandwala's case** (supra) was endorsed by the Hon'ble Supreme Court in **Allied Motors (P) Ltd. v. Commissioner of Income-tax** (1997) 224 ITR 677, wherein it was held that claim towards payment of sales tax could not be disallowed only on the ground that the liability was met after the end of the accounting year. The Hon'ble Supreme Court took into account the amendment made to Section 43B of the Act and held that the said amendment was retrospective being clarificatory.

Still further even the view expressed by a Single Bench of this Court in **Sirsa Industries' case** (supra) was reversed in 178 ITR 437 and it was held that where the assessee was following Mercantile System of accounting, deduction is claimable only in the year in which sales tax liability accrues and not in the accounting year in which the amount is paid. Earlier judgment in **United India Woollen Mills' case** (supra) was followed, which was referred upon by CIT(A) in accepting appeal of the assessee.

Accordingly, the question raised is decided against the revenue and in favour of the assessee.

(ADARSH KUMAR GOEL)
JUDGE

November 30, 2006 **(RAJESH BINDAL)**
renu **JUDGE**